

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

ALLAN THOMAS ROCKWELL,

Plaintiff,

v.

MELISSA BROUHARD,

Defendant.

Case No. 1:22-cv-00392-JLT-EPG

ORDER STRIKING SECOND AMENDED
COMPLAINT FOR EXCEEDING PAGE
LIMITATION

(ECF No. 82).

ORDER GRANTING PLAINTIFF LEAVE TO
FILE THIRD AMENDED COMPLAINT IN
COMPLIANCE WITH PAGE LIMITATION

THIRTY (30) DAY DEADLINE

Plaintiff Allan Thomas Rockwell (“Plaintiff”) proceeds *pro se* in this civil rights action initiated on April 4, 2022. (ECF No. 1).

On November 15, 2022, the Court issued findings and recommendations recommending that Defendants Denise Choate, Michael Choate, Tuolumne County and Melissa Brouhards’ motions to dismiss be granted in part. (ECF No. 76). The Court recommended that Defendants Denise Choate, Michael Choate, and Tuolumne County be terminated, and that Plaintiff be granted leave to amend only as to Plaintiff’s claims against Defendant Brouhard. (*Id.*) The Court provided Plaintiff with the following guidelines regarding amendment:

The Court will allow Plaintiff to amend his complaint, except as to the claims and defendants subject to dismissal, as set forth below. However, Plaintiff’s amended

1 complaint should include a “short and plain statement of the claim showing that
2 the pleader is entitled to relief.” It should also explain which claims Plaintiff is
3 bringing and the facts that support those claims. Additionally, Plaintiff’s amended
complaint should conform to the page requirements set forth by the Court.

4 (ECF No. 76, p. 13). The Court’s recommendation provided that:

5 9. If Plaintiff chooses to file an amended complaint, Plaintiff shall caption the
6 amended complaint “Second Amended Complaint” and refer to case number 1:22-
cv-00392- JLT-EPG. **Further, Plaintiff’s amended complaint shall be no more
than twenty (20) pages; and**

7 **10. Failure to comply with this order may result in the dismissal of this action.**

8 (*Id.* at p. 23) (emphasis in original). On March 9, 2023, District Judge Jennifer L. Thurston issued
9 an order adopting the Court’s findings and recommendations in full. (ECF No. 81). The order
10 adopting included a similar direction and warning:

11 10. If Plaintiff chooses to file an amended complaint, Plaintiff shall caption the
12 amended complaint “Second Amended Complaint” and refer to case number 1:22-
cv-00392- JLT-EPG. Further, Plaintiff’s amended complaint shall be no more than
twenty (20) pages.

13 **11. Failure to comply with this order may result in the dismissal of this action
without further notice.**

14 (*Id.* at p. 3) (emphasis in original).

15 Plaintiff filed a second amended complaint on April 10, 2023. (ECF No. 82). Upon
16 review, the Court notes that Plaintiff’s amended complaint is twenty-eight (28) pages in length,
17 and includes an additional fifteen (15) pages of exhibits. (*Id.*)

18 As Plaintiff’s second amended complaint fails to comply with the Court’s order not to
19 exceed twenty pages in length, the Court will strike the amended complaint from the record. *See*
20 *Wolf v. Idaho State Bd. of Correction*, 2021 WL 3721434, at *2 (9th Cir. Aug. 23, 2021) (finding
21 the district court did not abuse its discretion in striking a complaint that did not comply with the
22 20-page limit); *see also Ready Transp., Inc. v. AAR Mfg., Inc.*, 627 F.3d 402, 404 (9th Cir. 2010)
23 (finding that a district court’s inherent power to control the docket includes the power to strike
24 items from the docket). Plaintiff will be permitted thirty (30) days to file a third amended
25 complaint that complies with Federal Rules of Civil Procedure, the Local Rules, and this Court’s
26 order. If Plaintiff chooses to file a third amended complaint, Plaintiff’s amended complaint shall
27 be no more than twenty (20) pages. This page limit includes exhibits. However, Plaintiff need not
28 attach any exhibits or include any evidence at this time.

Based on the foregoing, IT IS ORDERED that:

1. Plaintiff's second amended complaint, filed on April 10, 2023, (ECF No. 82), is STRICKEN from the record for failure to comply with the Court's page limitations;
2. Within thirty (30) days from the date of service of this order, Plaintiff may file a Third Amended Complaint;
3. If Plaintiff chooses to file an amended complaint, Plaintiff shall caption the amended complaint "Third Amended Complaint" and refer to case number 1:22-cv-00392-JLT-EPG. Further, Plaintiff's amended complaint shall not exceed twenty (20) pages, including exhibits, in length.
4. If Plaintiff fails to comply with this order, the Court will recommend dismissal of this action, without prejudice, for failure to obey a court order and for failure to prosecute.

IT IS SO ORDERED.

Dated: April 26, 2023

/s/ Eric P. Gross
UNITED STATES MAGISTRATE JUDGE